



25 Sigourney Street Ste 2
Hartford CT 06106-5032

POLICY STATEMENT

Requests for Waiver of Civil Penalties

Purpose: Over time, numerous questions and concerns have been raised regarding both the penalty waiver process and the standard applied by the Department in determining whether to waive a penalty (\$1,000 or less) or to recommend a waiver of a penalty (over \$1,000). As a result of these questions and concerns, the Department has recognized the need to develop and issue a comprehensive publication regarding its administration of the penalty waiver provisions contained in the state's tax laws.

Note: This publication applies to all penalty waiver requests regardless of amount.

Effective Date: When released.

Statutory Authority: Conn. Gen. Stat. §12-206, Conn. Gen. Stat. §12-229, Conn. Gen. Stat. §12-263c, Conn. Gen. Stat. §12-263m, Conn. Gen. Stat. §12-268d, Conn. Gen. Stat. §12-284b, Conn. Gen. Stat. §12-293a, Conn. Gen. Stat. §12-330d, Conn. Gen. Stat. §12-390c, Conn. Gen. Stat. §12-392, Conn. Gen. Stat. §12-405d, Conn. Gen. Stat. §12-419, Conn. Gen. Stat. §12-439, Conn. Gen. Stat. §12-458, Conn. Gen. Stat. §12-488, Conn. Gen. Stat. §12-502a, Conn. Gen. Stat. §12-509, Conn. Gen. Stat. §12-548, Conn. Gen. Stat. §12-590, Conn. Gen. Stat. §12-638c, Conn. Gen. Stat. §12-649, Conn. Gen. Stat. §12-655, Conn. Gen. Stat. §12-667, Conn. Gen. Stat. §12-668, Conn. Gen. Stat. §12-692, Conn. Gen. Stat. §12-735, Conn. Gen. Stat. §17b-320, Conn. Gen. Stat. §38a-277, Conn. Gen. Stat. §51-81b; and Conn. Agencies Reg. §12-689-4.

Background: Each of the above-listed statutes either contains or incorporates by reference language similar to the following:

Subject to the provisions of section 12-3a, the commissioner may waive all or part of the penalties provided under this chapter when it is proven to his satisfaction that the failure to pay any tax was due to reasonable cause and was not intentional or due to neglect.

It is this language that is the authority under which the Commissioner may waive civil penalties. Similar language is found in various penalty provisions contained in the Internal Revenue Code. In determining whether to provide relief from penalties under similar language, the Internal Revenue Service (IRS) has condensed this two-pronged statutory requirement into a single requirement of reasonable cause. In addition, said language has been the subject of extensive litigation at the federal level. The Department used this guidance to help shape a comprehensive policy regarding its administration of the penalty waiver provisions contained in the state's tax laws. Therefore, in accordance with the rules described herein, the Department will apply a reasonable cause standard when determining whether to waive a penalty (\$1,000 or less) or to recommend a waiver of a penalty (over \$1,000).

Reasonable Cause: A reasonable cause determination will be made on a case-by-case basis and will be fact-specific. Simply put, each penalty waiver request will be judged individually based on its facts and circumstances.

In order to understand the facts and circumstances surrounding each penalty waiver request, taxpayers must provide the Department with answers to the following questions:

- What happened and when did it happen? In other words, the taxpayer must explain why he or she was unable to comply with the law. In so doing, the taxpayer must identify the specific facts and circumstances that prevented him or her from complying.

- How did the taxpayer handle the remainder of his or her other financial responsibilities during the time of noncompliance? In other words, and by way of example and illustration, was the taxpayer able to make mortgage payments, credit card payments, etc.?
- Once the facts and circumstances changed, what attempts did the taxpayer make to comply?
- Did the taxpayer comply with his or her tax obligations within a reasonable time after the facts and circumstances changed?

These questions are set forth in **Form DRS-PW, Request for Waiver of Civil Penalty**, which the Department developed in an effort to facilitate the penalty waiver process. As explained below, the Department will not consider any penalty waiver request unless it is accompanied by a fully completed and properly executed Form DRS-PW.

Form DRS-PW: In order to make a penalty waiver request to the Department, taxpayers must complete and submit a Form DRS-PW. (Form DRS-PW is available on the Department's website at www.ct.gov/DRS.) Form DRS-PW, which is submitted under the penalty of false statement, requires taxpayers to provide the Department with the specific details surrounding their penalty waiver request.

Taxpayers must submit penalty waiver requests to the Department's Penalty Waiver Unit at the following address:

Department of Revenue Services
 Penalty Waiver Unit
 PO Box 5089
 Hartford CT 06102-5089

Taxpayers are encouraged to provide as much detail as possible to the Department when making a penalty waiver request and may include attachments to Form DRS-PW.

It is important that taxpayers understand that the Department will not consider any penalty waiver request unless it is accompanied by a fully completed and properly executed Form DRS-PW. To this end, the taxpayer or, in the case of corporations, partnerships, limited liability companies, estates, and trusts, the person authorized to execute the return or pay the tax **must** sign Form DRS-PW. Moreover, the Department will not consider a penalty waiver request from a taxpayer who has an outstanding tax liability or who has unfulfilled filing obligations with the Department.

Note: Taxpayers who are on a payment plan and who are in compliance with the terms of said plan are eligible to submit penalty waiver requests. In addition, taxpayers who have timely protested or appealed an assessed liability are also eligible to submit penalty waiver requests.

Guidance On What May or May Not Constitute Reasonable Cause: As explained herein, each penalty waiver request will be judged individually based on its facts and circumstances. As such, reasonable cause will never be presumed. Therefore, and although not intended to be exhaustive, the following provides guidance that may be helpful in determining whether a taxpayer has established reasonable cause:

Circumstances beyond the taxpayer's control: From the Department's perspective, the main consideration is whether the taxpayer could have anticipated or otherwise foreseen the event that caused the noncompliance. To this end, loss of business records necessary to prepare a tax return as a result of fire or other casualty would be beyond the taxpayer's control. However, if there is sufficient time before the due date to reconstruct the lost records, the failure to pay tax on time will not be due to reasonable cause.

Ignorance of the law: As taxpayers must make reasonable efforts to determine their tax obligations, ignorance of the law will not establish reasonable cause. That having been said, factors such as the level of complexity of the issue or if there were recent changes in the tax laws (or tax forms) will be considered by the Department in determining whether reasonable cause exists.

The taxpayer made a mistake: Mistake, in and of itself, will not establish reasonable cause.

Forgetfulness or oversight by the taxpayer: Neither forgetfulness nor oversight by the taxpayer will, in and of itself, establish reasonable cause.

Death, serious illness, or unavoidable absence: Although death, serious illness, or unavoidable absence of the taxpayer (or death or serious illness in the taxpayer's immediate family) may establish reasonable cause, such a determination will be dependent on the specific facts and circumstances. To this end, the Department will, among other things, consider the following factors: the relationship of the taxpayer to the other parties involved; the date of death; dates, duration and severity of illness; dates and reasons for absence; how the event prevented

compliance; whether other business obligations were impaired; whether tax duties were attended to promptly when the illness passed or within a reasonable period of time after death.

Note: With regard to corporations, partnerships, limited liability companies, estates and trusts, death, serious illness or unavoidable absence of the person (or death or serious illness in such person's immediate family) who had the sole authority to execute the return or pay the tax may establish reasonable cause. As with individual taxpayers, such a determination will be dependent on the specific facts and circumstances.

Unable to obtain records: The inability of taxpayers to obtain necessary records may constitute reasonable cause. However, such a determination will be dependent on the specific facts and circumstances. To this end, the Department will, among other things, consider the following factors: why the records were needed to comply; why the records were unavailable and what steps were taken to secure the records; when and how the taxpayer became aware that it did not have the necessary records; whether other means were explored to obtain the needed information; why the taxpayer did not estimate the information; whether the taxpayer contacted the Department for instructions on what to do about the missing information; whether the taxpayer promptly complied once the missing information was received; supporting documentation such as copies of letters written and responses received in an effort to get the needed information.

Example: X is a resident of Connecticut and one of a limited number of partners in a closely held partnership. In taxable year 2005, X was involved with and materially participated in the activities of the partnership. With regard to taxable year 2005, the partnership did not issue Schedule K-1s to its partners until June 15, 2006. On April 15, 2006, X filed an extension of time to file her 2005 income tax return whereon she reported her tax liability for taxable year 2005 to be \$5,000. X remitted payment of \$5,000 with her extension request. X filed her 2005 income tax return on October 15, 2006 reporting a tax liability of \$15,000. Based on the fact that X paid less than 90% of the tax she ultimately determined she owed for taxable year 2005 by April 15, 2006, X was subject to the penalty imposed by Conn. Gen. Stat. §12-735. X subsequently requested a waiver of said penalty, contending that she was not able to determine the proper amount of tax on April 15, 2006, because she did not receive a Schedule K-1 from the partnership until June 15, 2006. Because X was involved with and materially participated in the

activities of the partnership in taxable year 2005, X was in a position to know or reasonably estimate the partnership's income. Moreover, and because of the limited number of partners, she was in a position to estimate her distributive share of the partnership's income. Consequently, based on these facts and circumstances, reasonable cause does not exist and the Commissioner would not recommend waiver of the penalty imposed against X.

Reliance on advice from a tax advisor: Penalty relief based on reliance on the advice of a tax advisor will be limited to issues generally considered technical or complicated. The taxpayer's responsibility to file, pay or deposit taxes cannot be excused by reliance on the advice of a tax advisor.

Notification to Taxpayers of Commissioner's Decision: If the Commissioner decides to waive a penalty of \$1,000 or less, the Department will send the taxpayer notification of the Commissioner's decision. If the Commissioner recommends the waiver of a penalty over \$1,000, the Department will send the taxpayer notification confirming that the Commissioner's recommendation was referred to the Penalty Review Committee. With regard to penalties over \$1,000, taxpayers will receive notification from the Penalty Review Committee once it acts on the Commissioner's recommendation.

If the Commissioner decides not to waive all or a portion of a penalty of \$1,000 or less or decides not to recommend the waiver of all or a portion of a penalty over \$1,000, the Department will send the taxpayer notification of the Commissioner's decision. If the taxpayer disagrees with the Commissioner's decision, the taxpayer may appeal the Commissioner's decision by filing a timely appeal to the Connecticut Superior Court. Information regarding appeal rights is contained in the notification letter. (**Note:** If the Commissioner recommends the waiver of a portion of a penalty over \$1,000, said recommendation is subject to the review and approval of the Penalty Review Committee. As such, and unless the Department receives confirmation from the taxpayer as to its agreement with the Commissioner's decision to waive a portion of a penalty over \$1,000, the Commissioner will wait until the appeal period expires before making a referral to the Penalty Review Committee. If a taxpayer does file a timely appeal, the Department will wait to make a referral to the Penalty Review Committee until such an appeal is final.)

Penalties Not Subject to Waiver: As set forth above, the following is representative of the statutory language that authorizes the Commissioner to waive penalties:

Subject to the provisions of section 12-3a, the commissioner *may* waive all or part of the penalties provided under this chapter when it is proven to his satisfaction that the failure to pay any tax was due to reasonable cause and was not intentional or due to neglect.

(Emphasis supplied.) The use of the word *may* makes it clear that it is within the Commissioner's discretion to waive a penalty (\$1,000 or less) or recommend a waiver of a penalty (over \$1,000). In accordance with this discretionary authority, the Commissioner has determined that he will not consider the waiver of the following penalties:

- Criminal penalties/willful violations;
- Fraud and intent to evade penalties imposed in connection with an audit;
- Negligence penalties imposed in connection with an audit;
- Penalty imposed by Conn. Gen. Stat. §12-295;
- Penalty imposed by Conn. Gen. Stat. §12-330i;
- Penalty imposed by Conn. Gen. Stat. §12-414a;
- Penalty imposed by Conn. Gen. Stat. §12-458e;
- Penalty imposed by Conn. Gen. Stat. §12-547a;
- Penalty imposed by Conn. Gen. Stat. §12-660;
- Penalty imposed by Conn. Gen. Stat. §12-736;

Criminal penalties aside, if a taxpayer disagrees with the Department's imposition of one of the above-listed penalties, the taxpayer may challenge that penalty by filing a timely protest with the Department's Appellate Division. To file a protest with the Department's Appellate Division, taxpayers may use **Form APL-002**, *Appellate Division Appeal Form*. Form APL-002 is available on the Department's website at www.ct.gov/DRS.

Status of Regulations: In accordance with Conn. Gen. Stat. §12-2(b), the Department will publish notice of its intent to adopt a regulation to implement the provisions of this pronouncement and will do so within 180 days of its issuance. It is the Department's intention that the regulation it intends to adopt will replace Conn. Agencies Regs. §12-3a-1 and Conn. Agencies Regs. §12-2-11. That having been said, and although the Department intends to follow the guidance set forth herein, the Department recognizes the effectiveness of both regulations until such time as they are repealed.

Penalty Review Committee: Conn. Gen. Stat. §12-3a establishes a Penalty Review Committee comprised of the Commissioner of Revenue Services (or an employee of the Department designated by the Commissioner), the State Comptroller (or an employee of the office of the Comptroller designated by said Comptroller) and the Secretary of the Office of Policy and Management (or an employee of the Office of Policy and Management designated by said Secretary). According to Conn. Gen. Stat. §12-3a, the Penalty Review Committee is authorized "to approve any waiver of penalty which the Commissioner of Revenue Services . . . is authorized to waive in accordance with this title which is in excess of one thousand dollars." Conn. Gen. Stat. §12-3a(a). Therefore, the Commissioner's recommendation to waive any penalty in excess of \$1,000 is subject to the review and approval of the Penalty Review Committee.

Note: The Penalty Review Committee has no authority to waive penalties on its own motion. Rather, the Penalty Review Committee only has the authority to approve or ratify the waiver of penalties that the Commissioner has recommended be waived. See 1994 Op. Conn. Atty. Gen. No. 1994-019 (July 24, 1994).

Questions Regarding a Penalty Waiver Request: Any and all questions regarding a penalty waiver request should be directed to the Department's Penalty Waiver Unit at **860-297-4944**.

Effect on Other Documents: Policy Statement 2010 (1), Requests for Waiver of Civil Penalties is superseded and can no longer be relied upon.

Effect of This Document: A Policy Statement explains in depth a current Department of Revenue Services (DRS) position, policy, or practice affecting the tax liability of taxpayers.

For Further Information: Call DRS during business hours, Monday through Friday:

- **1-800-382-9463** (Connecticut calls outside the Greater Hartford calling area only); **or**
- **860-297-5962** (from anywhere).

TTY, TDD, and Text Telephone users only may transmit inquiries anytime by calling 860-297-4911.

Forms and Publications: Visit the DRS website at www.ct.gov/DRS to download and print Connecticut tax forms and publications.

Paperless Filing/Payment Methods (fast, easy, free, and confidential): Business and individual taxpayers can use the **Taxpayer Service Center (TSC)** at www.ct.gov/TSC to file a variety of tax returns, update account information, and make payments online.

File Electronically: You can choose first-time filer information and filing assistance or log directly into the **TSC** to file returns and pay taxes.

Pay Electronically: You can pay taxes for tax returns that cannot be filed through the **TSC**. Log in and select the *Make Payment Only* option. Designate a payment date up to the due date of the tax and mail a paper return to complete the filing process.

DRS E-Alerts Service: Get connected to the latest news from DRS. Receive notification by email of changes to legislation, policies, and procedures. **DRS E-Alerts** provide information for employer's withholding tax, News – Press Releases, and Top 100 Delinquency List. Visit the DRS website at www.ct.gov/DRS and select *Sign up for e-alerts* under *How Do I?* on the gold navigation bar.

PS 2013(5)
Miscellaneous
Miscellaneous
Issued: 09/20/2013